



Virginia  
Regulatory  
Town Hall

## Proposed Regulation Agency Background Document

<b>Agency Name:</b>	Department of Social Services
<b>VAC Chapter Number:</b>	22 VAC 40-141-10 et seq.
<b>Regulation Title:</b>	Minimum Standards for Licensed Independent Foster Homes
<b>Action Title:</b>	Amend the regulation and change the title
<b>Date:</b>	March 27, 2003

This information is required pursuant to the Administrative Process Act (§ 9-6.14:9.1 *et seq.* of the *Code of Virginia*), Executive Order Twenty-Five (98), Executive Order Fifty-Eight (99), and the *Virginia Register Form, Style and Procedure Manual*. Please refer to these sources for more information and other materials required to be submitted in the regulatory review package.

### Summary

*Please provide a brief summary of the proposed new regulation, proposed amendments to an existing regulation, or the regulation proposed to be repealed. There is no need to state each provision or amendment or restate the purpose and intent of the regulation; instead give a summary of the regulatory action and alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.*

The purpose of amending the existing Minimum Standards for Licensed Independent Foster Homes (22 VAC 40-141-10 et seq.) is to increase the protections offered to children who are temporarily placed by their parents or legal guardians directly into the foster home, independent of a local department of social services or a licensed child-placing agency. It will also incorporate findings from the periodic review completed in 2002, recommendations from licensing staff, changes in the *Code of Virginia* (Code) since the regulation was adopted, and comments received in response to the changes proposed in the Notice of Intended Regulatory Action published in October 2002.

## Basis

*Please identify the state and/or federal source of legal authority to promulgate the regulation. The discussion of this statutory authority should: 1) describe its scope and the extent to which it is mandatory or discretionary; and 2) include a brief statement relating the content of the statutory authority to the specific regulation. In addition, where applicable, please describe the extent to which proposed changes exceed federal minimum requirements. Full citations of legal authority and, if available, web site addresses for locating the text of the cited authority must be provided. Please state that the Office of the Attorney General has certified that the agency has the statutory authority to promulgate the proposed regulation and that it comports with applicable state and/or federal law.*

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The *Code of Virginia*, § 63.2-217 grants the State Board of Social Services (Board) the authority to adopt regulations, as necessary or desirable to carry out Title 63.2. Section 63.2-1734 of the Code states that the Board shall adopt regulations for the activities, services and facilities to be employed by persons and agencies required to be licensed under Title 63.2 and that the regulations shall be designed to ensure that such activities, services and facilities are conducive to the welfare of the children under the custody or control of such persons or agencies. Independent Foster Homes are included in the definition of child welfare agencies as referenced in § 63.2-100 of the Code. The regulation is necessary to implement the required Code provisions. The Office of the Attorney General has certified that the agency has the statutory authority to promulgate the proposed regulation and that it comports with applicable and/or federal law.

The above code citations can be accessed on the Internet at:

<http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+63.2-100>

<http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+63.2-217>

<http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+63.2-1734>

## Purpose

*Please provide a statement explaining the need for the new or amended regulation. This statement must include the rationale or justification of the proposed regulatory action and detail the specific reasons it is essential to protect the health, safety or welfare of citizens. A statement of a general nature is not acceptable, particular rationales must be explicitly discussed. Please include a discussion of the goals of the proposal and the problems the proposal is intended to solve.*

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The major purposes of the amended regulation are to incorporate statutory changes in the *Code of Virginia* and to include amendments which would allow parents and legal guardians the option to retain custody of their child during the placement in an independent foster home; strengthen the safety requirements; distinguish between the needs of young children and adolescents; update medical requirements and background check requirements for providers; and clarify requirements regarding capacity and the qualifications of providers. Additionally, the purpose of amending the regulation includes prohibiting physical restraint techniques being used on children in independent foster homes and to include language regarding the responsibilities of the licensee. The amendments are considered essential to protect the health, safety and welfare of

children who are temporarily placed by their parents or legal guardians directly into a foster home, independent of local departments of social services or a licensed child-placing agency.

## Substance

*Please identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. Please note that a more detailed discussion is required under the statement providing detail of the regulatory action's changes.*

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Change the title from “Minimum Standards for Licensed Independent Foster Homes” to “Licensing Standards for Independent Foster Homes.”

The primary Code changes reflected in the proposed regulation are:

1. Updating necessary Code references as a result of recodification;
2. Including statements requiring sworn statements of affirmation and criminal record checks in addition to a search of the Child Protective Services Central Registry; and
3. Amending definitions to reflect changes in the Code as a result of recodification.

Other changes include:

1. Providing for “placement agreements” to be accepted in licensed independent foster homes as an option to an entrustment agreement, allowing parents to retain legal custody during a child’s placement;
2. Introducing requirements for placing agreements and individualized service plans;
3. Amending the length of a child’s placement in an independent foster home to “not longer than 180 days” with an exception that placement may exceed 180 days for reasons of parental illness/recuperation or military deployment if that was the reason for the placement and the provider then refers the child to the local department of social services to request an assessment of the care and custody of the child to determine if additional services or evaluations are necessary;
4. Deleting the exception to the experience and training requirements for licensed and registered family day care home providers and family day care homes approved by licensed family day care systems when providing foster care to children enrolled in the day care home.
5. Adding a statement that the provider shall be responsible for the home’s day-to-day operation and for meeting licensing requirements;
6. Requiring the provider, and any assistants left alone with children, to be able to speak, read, and write in English sufficient to understand and carry out the responsibilities and requirements of the standards to ensure the care, safety and protection of children;
7. Allowing the provider to complete initial foster parent orientation and training sessions offered by local departments of social services and licensed child-placing agencies to meet the training requirements during the first six months of initial licensure as an independent foster home;
8. Requiring the provider, any assistants, and any other adults expected to be alone in the home with children to receive, prior to licensure or employment, certification in first aid and cardiopulmonary resuscitation;

9. Including “other adults expected to be alone in the home with children” among those required to maintain a current certificate in first aid and cardiopulmonary resuscitation;
10. Revising the medical requirements for the provider, assistants and household members to no longer require tuberculin skin tests for children and to permit assessments for the risk of tuberculosis infections and disease to be acceptable for providers, assistants, an adult household members, as appropriate; requiring subsequent screening or testing, as appropriate, every two years thereafter; and requiring evaluations for any individual who comes in contact with a known case of tuberculosis or develops chronic respiratory symptoms;
11. Clarifying the maximum number of children in an independent foster home to include “any other children who reside in the home”;
12. Requiring drinking water to be available at all times, unless prohibited by a physician’s order;
13. Including special diets prescribed by a dentist and recognizing and respecting established religious dietary practices observed by individual children;
14. Strengthening the transportation requirements to include providers not “knowingly” allowing children to be transported by any person who has driving violations which place the occupants of the vehicle at risk, and allowing for parents or legal guardians of a child placed in the independent foster home to be exempt from this requirement when transporting their own child unless it poses an immediate danger to the health and safety of that child;
15. Strengthening the transportation requirements to require providers to report subsequent driving violations to the licensing representative and provide a copy of the provider’s and assistant’s driving record upon licensure renewal;
16. Ensuring that first aid supplies are easily accessible to adults, but not to children under the age of 13; prescription and non-prescription medications are inaccessible to children under the age of 13; and allowing the providers to permit self-administration of medication by a child under certain circumstances;
17. Adding missing children, death of a child, or any placement outside of the foster home to the list of reportable incidents;
18. Prohibiting the use of physical restraint on children in the independent foster home;
19. Distinguishing between the supervision requirements of young children and children with special needs and the supervision requirements for adolescents during the use of time-out or separation as a discipline technique;
20. Including additional physical accommodation requirements, e.g. bathroom requirements, crib requirements; and
21. Adding home safety requirements which include, but not limited to, listing poison control numbers by each telephone, child-resistant covers over all outlets when caring for children who are developmentally delayed to a preschool level, placing infants on their backs to sleep; not using portable cribs, play yards, or playpens as sleeping accommodations, prohibiting children who are under age 10 or who have motor or developmental delays from using the upper levels of a bunk bed, and immunization and other safety requirements for pets.

## Issues

*Please provide a statement identifying the issues associated with the proposed regulatory action. The term "issues" means: 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions; 2) the primary advantages and disadvantages to the agency or the Commonwealth; and 3) other pertinent matters of interest to the regulated community, government officials, and the public. If there are no disadvantages to the public or the Commonwealth, please include a sentence to that effect.*

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The public is expected to benefit from this regulation. The regulation strengthens the protections offered to children who are temporarily placed by their parents or legal guardians directly into a foster home, independent of local departments of social services or a licensed child-placing agency. The proposed amendments strengthen the authority and rights of parents by establishing an option allowing them to temporarily place their child in an independent foster home while retaining legal custody. This change enables the family to select whether temporarily entrusting a child to the provider or temporarily placing a child with a placing agreement best meets the family's specific needs and circumstances.

The Department does not anticipate any increase in the workloads of local departments of social services or the local juvenile and domestic relations court as a result of this regulation. The proposed amendments, while strengthening the protections of children, should not pose any unreasonable hardship to licensees.

The Department sees no disadvantages to the public or the Commonwealth.

## Fiscal Impact

*Please identify the anticipated fiscal impacts and at a minimum include: (a) the projected cost to the state to implement and enforce the proposed regulation, including (i) fund source / fund detail, (ii) budget activity with a cross-reference to program and subprogram, and (iii) a delineation of one-time versus on-going expenditures; (b) the projected cost of the regulation on localities; (c) a description of the individuals, businesses or other entities that are likely to be affected by the regulation; (d) the agency's best estimate of the number of such entities that will be affected; and e) the projected cost of the regulation for affected individuals, businesses, or other entities.*

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There are no projected additional costs to the state to implement and enforce the proposed regulation. There are no projected additional costs to local departments of social service or local juvenile and domestic relations courts. The requirements for entrustment agreements and foster care plans are established in the Code of Virginia and the proposed requirements for placing agreements do not exceed the statutory mandates.

Currently there are six independent foster homes that are either licensed or pending an application. The proposed regulation should not impose an unnecessary hardship on licensed independent foster homes since the majority of changes do not involve any cost. The additional direct costs to providers is projected to be minimal. Additional costs would include additional

persons needing to obtain and maintain certification in first aid and cardiopulmonary resuscitation and supplying additional driving record checks at renewal. (The current cost of a driving record is \$8.00.) The proposed changes in home safety and physical accommodations are not anticipated to force the provider to bear an additional cost or expenses, being primarily limited to the use of cribs and immunization of pets. The benefits to children and families outweigh the projected minimal costs to providers.

**Detail of Changes**

*Please detail any changes, other than strictly editorial changes, that are being proposed. Please detail new substantive provisions, all substantive changes to existing sections, or both where appropriate. This statement should provide a section-by-section description – or cross-walk – of changes implemented by the proposed regulatory action. Where applicable, include citations to the specific sections of an existing regulation being amended and explain the consequences of the proposed changes.*

**Change the title from “Minimum Standards for Licensed Independent Foster Homes” to “Licensing Standards Independent Foster Homes.”**

Consequence: Deletes the word “minimum”.

**Table of Contents is changed and expanded.**

Section entitled “Child Abuse or Neglect Record” has been changed to “Background checks” to more accurately reflect the requirements of the section.

Section entitled “Placing Agreement Requirements” has been added and section entitled “Temporary Entrustment Agreements” has been changed to “Temporary Entrustment Agreement Requirements”.

Due to the addition of the section entitled “Placing Agreement Requirements” the section “Supervision of Children in Care” has been assigned a new number.

*Consequence:* There are no consequences as a result of the re-organization and expansion of the Table of Contents.

**22 VAC 40-141-10 Definitions are deleted, changed and added.**

Definitions that have been deleted:

“Child Protective Service Central Registry” has been deleted as unnecessary because it is explained in the regulation.

*Consequence:* The reader is not encumbered with a definition that is only referenced once in the regulation and is explained in the text of the regulation.

“Cooling device” has been deleted as unnecessary because it is used only once in the regulation.

*Consequence:* The reader is not encumbered with a definition that is only referenced once in the regulation and is explained in the text of the regulation.

“Department’s representative” has been deleted since it is included in the revised definition of “Commissioner”.

*Consequence:* The reader is not encumbered with a definition that is referenced as a part of another definition.

Definitions that have changed:

“Commissioner” has been changed to mean the Commissioner of the Department of Social Services and to include his designee or authorized representative. It deletes referring to the Commissioner as the Director of the Virginia Department of Social Services.

*Consequence:* The definition complies with the definition of “Commissioner” in the Code.

“Good character and reputation” has been changed to include that the individual is suitable and able to guide children and clarifies that references are character and reputation references.

*Consequence:* A clear definition will allow a more consistent interpretation of the phrase.

“Temporary entrustment agreement” has been changed to reflect the difference in the length of time a child may be placed in the independent foster home.

*Consequence:* To be consistent with the definition of temporary entrustment agreement in other regulations and to reflect changes in the proposed amendments.

Definition that has been added:

“Placing agreement” has been added to describe an alternative to an entrustment agreement that allows the parents or legal guardians to place a child in the independent foster home but still retain custody.

*Consequence:* The definition specifies the requirements for a placing agreement.

**22 VAC 40-141-20 Legal authority has been changed.**

This section has been changed to incorporate placing agreements.

*Consequence:* Adds “placing agreements” as an alternative to entrustment agreements for placing a child in an independent foster home.

**22 VAC 40-141-30 General requirements have changed.**

22 VAC 40-141-30 A. This section has been changed to reflect the change in the length of time that a child may remain in the independent foster home to 180 days or less. The section has been reorganized to better explain the requirements when a provider must petition the local juvenile and domestic relations court for children who are placed in the home by a temporary entrustment agreement and do not return to their family within the initial 90 days of placement. An exception has been added to allow for placements due to military deployments or parental illness/recuperation to exceed 180 days so long as the local department of social services is advised of the situation and the child is referred to determine if additional services or assessments are necessary.

*Consequence:* The section has been reorganized to improve readability and clarity. The changes in length of stay and placing agreements are the result of the periodic review of the existing regulation and designed to provide additional options for families.

22 VAC 40-141-30 C. The exception regarding licensed and registered family day care home providers and family day care homes approved by family day care systems to be exempt from the experience and training requirements of this subsection has been deleted.

*Consequence:* The existing language was not effective since children are no longer “enrolled” in day care once they become a member of the household and it does not offer the necessary protection to children if experience or training requirements relating to working with children with special needs are lowered based on a provider’s history with a child.

22 VAC 40-141-30 D. The requirement was added stating the provider shall be responsible for the home’s day-to-day operation and for meeting licensing requirements.

*Consequence:* This addition clarifies the responsibilities of the licensee and is consistent with other regulations.

**22 VAC 40-141-40 The existing title “Child Abuse or Neglect Record” has been replaced with “Background Checks” and the content has changed.**

The title of this section has been changed to reflect the Code requirements for background checks for child welfare agencies.

*Consequence:* The new title encompasses the Code requirements for the applicant, provider, assistants, and household members, and any other adult who is involved in the day-to day operation of the independent foster home or will be alone with, in control of, or supervising one or more children placed in the home, to have a background check.

22 VAC 40-141-40 A. Any other adult who is involved in the day-to-day operations of the independent foster home or will be alone with, in control of, or supervising one or more children placed in the home has been added to those required to have a background check. The requirements of a background check (criminal record check, search of Central Registry, and sworn affirmation or disclosure statement) are outlined and explained.

*Consequence:* The change is necessary to comply with Code requirements,

**22 VAC 40-141-60 Assessment of knowledge, skills and abilities has been re-organized and changed.**

22 VAC 40-141-60 A. A requirement has been added specifying that the provider, and any assistants left alone with children, shall be able to speak, read, and write in English sufficient to understand and carry out the responsibilities and requirements of these standards.

*Consequence:* This requirement strengthens the protection of children and ensures that the provider and assistants that are left alone with children can communicate with licensing staff and emergency personnel should the need arise and read label directions to ensure medications are properly administered.

22 VAC 40-141-60 D. The existing language requiring that the provider and assistant be able to communicate and follow instructions has been deleted.

*Consequence:* The existing wording was unnecessary and repetitive in light of the changes in 22 VAC-141-40-60 A.

22 VAC 40-141-60 G. Code citation has been updated.

*Consequence:* Reflect the changes to the Code as a result of recodification.

**22 VAC 40-141-70 Training has been changed and reorganized.**

22 VAC 40-141-70 A. The option has been added for providers to access training from local departments of social services or licensed child-placing agencies when available, to assist providers in completing an initial foster parent orientation and training session.

*Consequence:* This change broadens the potential availability of training and offers additional skill development for providers.

22 VAC 40-141-70 B. Adds the requirement that providers, assistants, and other adults expected to be alone in the home with children receive certification in first aid and cardiopulmonary resuscitation (CPR) prior to licensure or employment.

*Consequence:* Strengthens the protections offered to children in care by ensuring that a person trained in first aid and CPR techniques is available in case of an emergency.

22 VAC 40-141-70 C. Adds the requirement that any other adult expected to be alone with children maintain current certification in first aid and cardiopulmonary resuscitation and adds the American Heart Association to the list of approved sources for training.

*Consequence:* Strengthens the protections offered to children in care by ensuring a person trained in first aid and CPR techniques is available in case of an emergency.

22 VAC 40-141-70 D. The requirement for the provider to attend 20 hours of training has been moved to this subsection.

*Consequence:* Provides clarity by distinguishing the annual training requirement from the requirement to attend initial foster parent orientation and training “when available”.

**22 VAC 40-141-80 Medical requirements for provider, assistant and household members have been changed.**

22 VAC 40-141-80 A. Deletes the requirement for each permanent member of the household to be tested for TB and changes it to “each adult member of the household.” The section also allows for provider, assistant and adult household members to undergo an assessment for risk of tuberculosis infection and disease. The TB assessment was added in light of the latest Virginia Department of Health Guidance that allows an assessment for risk of tuberculosis infection and disease as acceptable evidence of freedom from tuberculosis in a communicable form. The existing requirement for tuberculin skin testing remains for individuals that fall into a higher risk group.

*Consequence:* The additional requirement conforms to Virginia Department of Health Guidance. In addition, the Center for Disease Control and Prevention (CDC) has determined that children in

high-risk groups may benefit from screening, but that most children are not members of a high-risk group and could be deleted unless the Health Department recommends it. This would be covered under the existing 22 VAC 40-141-80 D and F.

22 VAC 40-141-80 E. A requirement has been added that requires subsequent screening or testing, as appropriate, every two years thereafter.

*Consequence:* Strengthens the protection of children and meets existing requirements in other types of care provided in a family home.

22 VAC 40-141-80 F. A requirement has been added that “any individual” who comes in contact with a known case of tuberculosis or develops chronic respiratory symptoms be evaluated to indicate the absence of tuberculosis in a communicable form.

*Consequence:* Strengthens the protection of children by requiring any individual who comes in contact with a case of tuberculosis or develops chronic respiratory symptoms be evaluated. If the individual has an active case of TB the Health Department guidelines and recommendations along with 22 VAC 40-141-80 D continue to protect others who may be placed at risk.

**22 VAC 40-141-85 Temporary entrustment agreements: Title of this section has been changed to “Temporary entrustment agreement requirements.”**

22 VAC 40-141-85 A. The word “written” has been added to provide clarity. The option of parents using a placing agreement has been added. A requirement for the provider to consider the needs of the child and whether the home can meet the needs of the individual child, the needs of any other children residing in the home, and the impact of the individual child joining the household, prior to signing an entrustment agreement has been added.

*Consequence:* Adding the word “written” clarifies that a verbal agreement is not acceptable. The option of a placing agreement provides an additional choice to parents needing to temporarily place a child in an independent foster home. The requirement for providers to consider the needs of the child, as well as the needs of any other children residing in the home, and the dynamics of having another child on the home is added to reduce potential disruptive situations and to ensure the placement is beneficial.

22 VAC 40-141-85 B. The length of a child’s placement under a temporary entrustment agreement is changed from 90 to 180 days.

*Consequence:* Changes the existing length of stay to 180 days and provides additional choices for families.

22 VAC 40-141-85 G. This has been added to ensure that independent foster home providers are aware of their obligation to file a foster care plan pursuant to § 16.1-281 of the Code.

*Consequence:* Ensures that the provider is aware of the Code requirements regarding entrustment agreements and filing a foster care plan.

**22 VAC 40-141-90 Placing agreement requirements have been added. This replaces 22 VAC 40-141-90 (Supervision of children in care).**

Subsections A- E have been added to detail the requirements of the written placing agreements which allow the child's parents or guardians to retain legal custody of the child during a placement in the independent foster home and requires contact with and notification to the local department of social services, if the provider becomes aware that the placement will exceed 180 days. The local department of social services is contacted to ascertain if the child needs additional assessments or services and to determine if a petition to access the care and custody of the child should be filed in the local juvenile and domestic relations court. The written placing agreement should include identifying information, including proof of identity of the child, address the acquisition of and consent for medical treatments needed by the child, detail the rights and responsibilities of each party involved; and address responsibility for financial support. Placing agreements shall not exceed a child's 18<sup>th</sup> birthday and allow the parents to request the return of a child at any time prior to the conclusion of the placement. Subsequent placing agreements for the same child are considered extensions and whenever a child has been in an independent foster home for a total of 180 days, the provider shall contact the local department of social services and request an assessment of the child and evaluation of services needed and to determine if a petition to assess the care and custody of the child should be filed in the local juvenile and domestic relations court.

*Consequence:* The addition of placing agreements allows a parent to determine if they wish to retain custody during the temporary placement of a child in an independent foster home. This increases the choices and protections available to parents and families. Requiring the provider to contact the local department of social services if a child's placement exceeds 180 days prevents children from being placed in a short-term, temporary placement for a lengthy period of time, without consultation and potential oversight from the local department of social services. Treating subsequent placing agreements as extensions of the initial placing agreement ensures that children do not remain in placement for longer than 180 days without consultation and potential oversight from the local departments of social services or juvenile and domestic relations court.

**22 VAC 40-141-95 Supervision of children in care has been re-numbered and changed.**

22 VAC 40-141-95 B. The requirement for a substitute has been changed to include requiring the provider to maintain a signed statement of agreement that the person has agreed to serve as the substitute.

*Consequence:* Ensures that a person has been identified as the substitute in case of emergency.

**22 VAC 40-141-100 Capacity has been modified.**

22 VAC 40-141-100 B. It is no longer required to count the assistant's children in the capacity unless said children actually reside in the home. The requirement has also changed to include "any other children who reside in the home" as part of the capacity.

*Consequence:* The new requirement will ensure that all children residing in the home, including children placed by a local department of social services or a child-placing agency, will be included when determining the maximum capacity of the home.

**22 VAC 40-141-110 Essentials for each child has changed.**

22 VAC 40-141-110 A. The dietary requirements have changed to include special diets prescribed by a dentist and for observing established religious dietary practices of individual children.

*Consequence:* The additional requirements ensure that specialized diets ordered by dentists will be available when necessary. The requirement regarding established religious dietary practices has been added to ensure that a child's religious dietary practices are respected.

22 VAC 40-141-110 C. A requirement has been added that drinking water shall be available at all times, unless prohibited by a physician's order.

*Consequence:* Ensures that drinking water is available for children at all times.

22 VAC 40-141-110 D. Normal activities of daily living such as meals appropriate to the child's nutritional needs, time for sleep and rest appropriate to the child's age, bathing, etc. shall be opportunities for teaching and guiding behavior and shall not be used or withheld as punitive measures nor shall they be extreme, unusual or abusive.

*Consequence:* Strengthens the protections of children by including meals, opportunities for sleep and rest, bathing, etc. as essential for children and

#### **22 VAC 40-141-120 Transportation of children has changed.**

22 VAC 40-141-120 C. This has been revised and now requires that the provider, and any assistants who transport children, maintain an acceptable driving record as previously outlined and not possess any driving violation on file with the Department of Motor Vehicles related to driving under the influence of alcohol or drugs, reckless driving, or any offense that places other occupants at risk within the five years prior to the application and during the period of licensure. Driving records shall be provided to the licensing representative upon application and also upon application to renew a license. Driving violations as listed shall be reported to the licensing representative.

*Consequence:* This change is to help ensure that children are not placed at risk while being transported by the independent foster home provider or assistant.

22 VAC 40-141-120 D. This subsection adds that a provider shall not knowingly allow children to be transported by any person who has a record of driving violations as outlined in 22 VAC 40-141-120 C. An exception is added stating that the requirement does not prohibit a parent or legal guardian from transporting their child unless it poses an immediate danger to the health and safety of the child.

*Consequence:* The addition of this requirement adds an additional layer of protection for children, but does not pose an unreasonable hardship on the provider. For example, the provider may be reasonably aware that a close friend or family member, who may transport children, has a driving violation on file. This does not extend to bus drivers or those with more remote contact with the children. The Code places similar responsibility on operators of family day homes when requiring that it shall be unlawful for any person to operate a family day home if he knows that any other person who resides in the home has been convicted of certain offenses and the existing regulation places the responsibility on the provider to not allow a known sex offender to have contact with children in care. The change is designed to increase the protections offered to children. The exception to not hold parents or legal guardians to this requirement "unless it

poses an immediate danger to the health and safety of the child” does not infringe upon a parent’s right to visit with their child or make decisions about their child based upon past driving violations, but does protect children who may be placed in immediate danger, e.g. a parent who is under the influence of alcohol or other drugs.

**22 VAC 40-141-130 Medical care of children has been revised.**

22 VAC 40-141-130 B. The requirement to have first aid supplies easily accessible to adults in the home but not accessible to children has been changed to read “not accessible to children under the age of 13.”

*Consequence:* The requirement was changed to ensure that first aid supplies are easily accessible to adults. If first aid supplies are kept in an area that makes them inaccessible to older adolescents, potentially they would have to be locked and this does not make them easily accessible to adults. The Department does not believe that this presents any lessening of the protection for children. Similar regulation for other care settings such as family day homes requires that the supplies be inaccessible to children, however the definition of a “child” is an “individual under 13 years of age”.

22 VAC 40-141-130 G. The requirement to keep all prescription and non-prescription medication locked has been changed to “inaccessible to children under the age of 13.”

*Consequence:* The Department does not feel that changing the requirement lessens the protections of young children since the medication has to be kept inaccessible to them. Similar requirements apply to family day homes.

22 VAC 40-141-130 G. 1. The requirement for a provider to maintain a daily documentation of all prescription and nonprescription medication administered to a child in care has been changed to no longer require providers to document the amount of diaper ointment or sunscreen applied.

*Consequence:* The amount of sunscreen and diaper ointment will vary from use to use and estimates of usage each time is of little value.

22 VAC 40-141-130 H. This subsection has been added to allow for self-administration of medication by a child, if certain protections are met. The child must be physically and mentally capable of properly taking the medication without assistance, the provider must have a written statement from the parents or physician documenting the child’s capacity to take medication without assistance, and the provider ensures that the child’s medication and any other medical supplies are not accessible to children under the age of 13.

*Consequence:* Allows children to self-administer medication in certain circumstances and does not retard development and skills which may already be present, e.g. an asthmatic child is much more aware of when they need to use their inhaler and can quickly assess and treat the situation to avoid a more dangerous situation. A child’s temporary placement in an independent foster home will not interfere with previous decisions made by a child’s parents, legal guardian, or physician determining that they are able to self-administer their medication.

22 VAC 40-141-130 I. Incidents such as missing children, the death of a child and any placement of a child outside of the independent foster home have been added to the list of

incidents that the provider is required to report to a child's parent or guardian and to the licensing representative.

*Consequence:* Strengthens the protections offered to children and their families.

22 VAC 40-141-130 J. The requirement has been added for providers to receive written authorization for routine, as well as emergency, medical care and to receive authorization for dental care.

*Consequence:* Ensures that a child will be able to receive medical and dental care as needed.

### **22 VAC 40-141-150 Discipline of children has modified.**

22 VAC 40-141-150 A. A statement that the provider shall establish rules and expectations that encourage and teach desired behaviors and discourage undesired behaviors has been added and the phrase "rules of conduct" has been replaced with "house rules and expectations".

*Consequence:* The additional sentence and replacement of the phrase "rules of conduct" more accurately reflects the parenting role of the provider and can also relate to the goals established for the child.

22 VAC 40-141-150 B. Additional descriptions of prohibited types of punishment, rough play or severe disciplinary action administered to a child's body have been included. The proposed prohibited actions include, striking or hitting a child with a part of the body or an implement, pinching or pulling a child.

*Consequence:* Strengthens the protections offered to children temporarily placed by their parents in an independent foster home.

22 VAC 40-141-150 C. Use of physical restraint on children in independent foster homes has been changed. The proposed changes prohibit the use of physical restraint and no longer permit an exception for providers who have received crisis intervention and physical restraint techniques training. A definition of "physical restraint" has been included in the section to distinguish "physical restraint" from commonly accepted parenting practices.

*Consequence:* This change strengthens the protection offered to children and their families. Children requiring this level of behavioral intervention may be better served in a locally approved foster home or a therapeutic foster home associated with a child-placing agency.

22 VAC 40-141-150 E. Clarification has been added regarding levels of supervision based on the age and special needs of children when a provider uses time-out or separation as a disciplinary technique. The proposed changes would maintain the sight and sound supervision requirement for children under the age of 13 or those diagnosed with special needs, and ensure that adolescents are within sight or sound of the provider or assistant at all times when separated from others for disciplinary reasons. The proposed changes limit the amount of time that children under the age of 13 or those with special needs may be placed in time-out.

*Consequence:* Increases the options available to providers working with older children and still maintains safety protections for all children.

### **22 VAC 40-141-170 Abuse and neglect reporting responsibilities of providers has been updated to change the Code citation as a result of the recodification.**

**22 VAC 40-141-180 Services to children has been changed.**

22 VAC 40-141-180 A. The provision for services to be specified in an individualized service plan has been added for those children placed by a placing agreement to ensure that there is a written plan for services for all children.

*Consequence:* Ensures that children placed in the home under a placing agreement have the same access to services as children with a foster care plan. Ensures equal protection for children regardless of placing arrangement.

22 VAC 40-141-180 D. This subsection has been revised to clarify that foster care service plans are only applicable for children “entrusted to the provider by an entrustment agreement.”

*Consequence:* The revision is for clarity only.

22 VAC 40-141-180 E. The requirements for preparing an individualized service plan for children placed by a placing agreement have been added. The requirements for individualized service plans, while different from foster care plans, state that the plan must address the services needed and those which will be provided to the child and his family and the plan must describe the reasons why the child is in placement; a summary of the child’s situation at the time of placement in relation to the child’s family, include a statement regarding the child’s health and educational status; describe the child’s needs; list the goals for the child during the placement, indicate a projected length of time the child will be in the independent foster home; and describe the programs, care, services and any means of support that the provider will offer to the child or describe the arrangements for the child and the child’s parents or guardian to provide needed services or supports; describe the projected level of involvement of the child’s parents or guardians and the visitation arrangements; and where appropriate, describe any programs or services to prepare a child aged 16 or older to live independently. The proposed changes require the provider to work with the child’s parents or guardians at admission to identify goals and objectives designed to reunite the child with his family and identifies the parties that receive copies of the plan.

*Consequence:* Ensures that children placed in the home under a placing agreement have the same access to services as children with a foster care plan. Ensures equal protection for children regardless of placing arrangement.

22 VAC 40-141-180 F. Adds the requirement for the provider to update the individualized service plans at least every 30 days.

*Consequence:* Ensures that children placed in the home under a placing agreement have the same access to services as children with a foster care plan. Ensures equal protection for children regardless of placing arrangement.

22 VAC 40-141-180 J. Adds the requirement for the provider to submit individualized service plans at the time that the provider petitions the local juvenile and domestic relations court to assess care and custody of a child placed by a placing agreement.

*Consequence:* Ensures the provider informs the court of the child’s needs and goals during the placement in order to assist the court in determining care and custody if a child is not returned to

his parents within 180 days of the placement agreement being signed and a petition to the court is warranted.

22 VAC 40-141-180 K. This has been changed to require the provider to attend all court hearings involving a child, as long as the child is placed in the independent foster home.

*Consequence:* Expands the required participation from court hearings involving the child's entrustment agreement, service plans, and custody, to all court hearings involving the child during the term of their placement.

**22 VAC 40-141-190 Physical accommodations in the independent foster home have been revised.**

22 VAC 40-141-190 A. 3. The requirement for indoor bathing and toilet facilities has been expanded to require at least one toilet, basin and tub or shower to be available for every eight persons.

*Consequence:* This addition establishes a minimum number of toilets, basins, etc. to be available to every eight persons. It establishes a consistent standard to be used in determining capacity based on the facilities available in the home. The requirement for one toilet, basin and tub or shower to be available for every eight persons has been previously established in other regulations involving the Department of Social Services.

22 VAC 40-141-190 A 4. The types of cribs to be used by infants, and children not developmentally ready to sleep in a bed, has been clarified to state that the crib used must meet current Consumer Product Safety Commission (CPSC) standards.

*Consequence:* This strengthens the protections available to children by ensuring that the cribs that do not meet current safety standards are not used in independent foster homes. The proposed change does not require that providers purchase cribs but only be knowledgeable when determining if a child's crib would be appropriate in the independent foster home. It also prohibits the use of portable "pack and play" cribs or mesh sided cribs, non-rigidly constructed baby cribs, cradles, car beds, baby baskets, and bassinets since they are not covered by the standards. The CPSC does have standards for "non-full-size" baby cribs which include portable cribs, crib-pens, specialty cribs, undersize cribs, and oversize cribs. This is the same requirement that currently exists in licensed family day homes to help ensure a safe sleeping environment for children. The requirements for full-size and non-full size cribs and instructions for obtaining information on cribs will be made available to providers by the regional licensing staff.

22 VAC 40-141-190 B. The requirement has been added that a "cooling device" be mechanical. Examples of mechanical cooling devices are included.

*Consequence:* The definition of "cooling device" was eliminated from the definitions as unnecessary since it was only used once during the regulation and the defining criteria could be included in the text of 190 B.

22 VAC 40-141-190 E. The requirement for the home to have a working telephone has been changed to include that the working telephone "shall be available to all household members for use in case of emergency."

*Consequence:* Ensures that any member of the household can access the telephone in case of an emergency and requires the provider to consider placement of phones throughout the house since even young children have been known to properly access emergency-911 in an emergency.

22 VAC 40-141-190 I. When the licensing inspector observes conditions that indicate the need for an inspection from the local Health Department and requests the provider to have the inspection the requirement now states that a copy of the inspection report be provided to the department.

*Consequence:* Improves the health and safety protections offered to children in the home and assists licensing staff in assessing the home's continued appropriateness to provide care to children.

**22 VAC 40-141-200 Home safety has changed.**

22 VAC 40-141-200 A. Poison control has been included in the list of police, fire fighters, and medical professionals that providers shall have a plan for seeking assistance from the above emergency systems. The proposed changes will require that the poison control number be posted next to each telephone.

*Consequence:* Strengthens the protection offered to children and families.

22 VAC 40-141-200 E. The requirement for providers to keep cleaning supplies, etc. locked and out of the reach of children has been changed to requiring that the substances be kept locked or out of the reach of children under the age of 13.

*Consequence:* This change continues to protect young children who may accidentally ingest or cause harm with cleaning supplies and other toxic substances, but allows a provider to determine the safest way to store cleaning supplies etc. based on the ages and supervision needs of the children in the home and the individual circumstances. Consistent with other regulation for care provided in a family home, however the definition of a "child" is an individual under the age of 13.

22 VAC 40-141-200 H. The proposed change requires that radiators, oil and wood burning stoves, space heaters etc. used in areas accessible to children under the age of 13, shall have protective barriers or screens.

*Consequence:* The proposed change still maintains the protections for young children who are the most likely to accidentally suffer an injury, but does not require a provider who serves only older adolescents to provide potentially costly screens or barriers. Consistent with other regulations for care provided in a family home, however the definition of a "child" is an individual under the age of 13.

22 VAC 40-141-200 J. The requirement has been added that homes serving children of any age who are developmentally delayed to a comparable maturity of a preschool child also requires the use of protective, child-resistant covers over all electrical outlets.

*Consequence:* Strengthens protections to children.

22 VAC 40-141-200 K. The requirement for the home to comply with the guidelines established for State Regulated Care Facilities regarding smoke detectors and fire extinguishers has been added.

*Consequence:* Strengthens the protections offered to children.

22 VAC 40-141-200 L. The proposed changes require that infants be placed to sleep on a firm, tight-fitting mattress in a crib that meets current safety standards and that soft bedding of any kind not be used under or on top of infants.

*Consequence:* The above measures are designed to reduce the risk of suffocation according to recommendations from the U.S. Consumer Product Safety Commission, the American Academy of Pediatrics, and the National Institute of Child Health and Human Development. Similar safety requirements are being instituted in other home settings providing care to children.

22 VAC 40-141-200 M. The requirement that infants to be placed on their backs when sleeping or napping unless otherwise directed by the child's physician, has been added. If placing an infant in that position is contraindicated by the child's physician, the provider will be required to maintain a copy of the written statement in the child's record.

*Consequence:* The above measures are designed to reduce the risk of suffocation according to recommendations from the U.S. Consumer Product Safety Commission, the American Academy of Pediatrics, the National Institute of Child Health and Human Development and the Sudden Infant Death Syndrome Alliance. Similar safety requirements are being instituted in other home settings providing care to children.

22 VAC 40-141-200 N. A requirement that playpens, play yards, and portable cribs not be used for sleeping has been added.

*Consequence:* This requirement strengthens the protection of children. Play yards, playpens, and portable cribs have evolved into virtually identical products according to information published by the U.S. Consumer Product Safety Commission. Over 200 babies have died in playpens since 1988, according to the CPSC. Current standards exist that play yards, playpens, etc. not be used for sleeping for children in other home settings providing care to children.

22 VAC 40-141-200 O. Provisions for the use of bunk beds or double decker beds has been added. The proposed changes would allow the use of bunk beds or double decker beds only for children aged 10 and older and limit the use to those children 10 and older that do not have motor or developmental delays.

*Consequence:* The addition of the above requirement will strengthen the protection of children and limit accidental injuries.

22 VAC 40-141-200 P. The requirement for pets to be immunized and treated for fleas, ticks, worms, or other diseases, as needed, has been added.

*Consequence:* Strengthens the protection of children.

22 VAC 40-141-200 Q. The requirement that providers instruct children on safe procedures to follow when in close proximity to animals or when feeding animals, and to ensure hand washing after handling animals or animal waste has been added.

*Consequence:* Strengthens the protection of children by reducing the risk of animal bites and other types of injuries to children.

**22 VAC 40-141-210 Record requirements have changed.**

22 VAC 40-1441-210 A. 1. The words “and placing agreement” have been added. The record keeping requirements for placing agreements are identical to the existing requirements for entrustment agreements and include receiving permission for dental as well as medical care.

*Consequence:* Ensures that children have equal protections and opportunities for services regardless of the placing arrangements.

22 VAC 40-141-210 A. 7 This requirement has changed to require that the provider maintain copies of individualized service plans or foster care plans, as appropriate.

*Consequence:* Ensures that the record keeping requirements are the same regardless of a child’s placing arrangement.

22 VAC 40-141-210 A. 9 The record keeping requirements have changed to include reports of accidents, as well as reports of major injuries, illnesses, and serious incidents.

*Consequence:* Strengthens the protections to children and assists licensing representatives and others involved with the child determine if the child’s placement in the home is suitable.

22 VAC 40-141-210 A. 10. Editorial changes have been made to ensure that copies of petitions filed with juvenile and domestic relations court within the time frames designated by the use of either an entrustment agreement or a placing agreement are maintained in the child’s record.

*Consequence:* Strengthens the protection of children and families and ensures that procedures for entrustment agreements or placing agreements are being followed.

22 VAC 40-141-210 B. The requirement for a child’s discharge summary to be sent to the local juvenile and domestic relations court if a petition has been made to the court has been added to the requirement that discharge summaries be sent whenever the court has approved the entrustment agreement and foster care service plan.

*Consequence:* Ensure that children receive equal protections regardless of placing arrangement.

## Alternatives

*Please describe the specific alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action.*

The alternatives to amending the existing Minimum Standards for Licensed Independent Foster Homes were to retain the regulation in it’s existing form or to propose repealing the regulation. While a seldom-used alternative to foster homes approved by child-placing agencies and local departments of social services, these homes do offer an additional choice to families. The goal of the amended regulation, Licensing Standards fro Independent Foster Homes, is to offer an

option whereby parents or guardians could directly place a child in an independent foster home and still maintain custody by allowing the use of “placing agreements. In order to promote the welfare and safety of children, established standards of care are necessary. The proposed amendments serve to strengthen the safety of the environment and ensure that children have equal opportunities regardless of placing arrangement. The proposed amendments have been designed to increase the options for families needing to place children temporarily in an independent foster home, strengthen the protections offered to children and families, and not impose burdensome, intrusive or financially prohibitive requirements on providers.

### Public Comment

*Please summarize all public comment received during the NOIRA comment period and provide the agency response.*

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The sole public comment received was from Children’s Services of Virginia. One comment was that it might be more efficient for the state to eliminate the existing Minimum Standards for Licensed Independent Foster Homes and apply the foster home and provider requirements as detailed in the existing regulation Minimum Standards for Licensed Child-Placing Agencies to these homes.

Department’s response: Small, private independent foster homes represent an alternative to local departments of social services and licensed child-placing agencies. Since the licensed independent foster homes do not have the resources of a child-placing agency or local department of social services to assist in providing the services for children, forcing them to maintain the same requirements as homes affiliated with a child-placing agency or local department of social services was not feasible. Instead regulations involving foster care homes with child-placing agencies and locally approved homes were reviewed and additional safety measures for the physical accommodations and home safety were included in the proposed amendments.

Children’s Services of Virginia also expressed the following specific concerns.

1. The regulations for Independent Foster Homes do not specify the level of need the foster child has, i.e., regular foster care or treatment foster care.

Department’s response: The decision to place a child in a particular home is left to the parent or guardian of the child. The requirement has been added that, prior to signing an entrustment agreement or placing agreement, the provider consider the needs of the child and whether the independent foster home can meet the needs of the child, the needs of any other children residing in the home and the impact of the individual child joining the household.

2. Children’s Services of Virginia states that licensed private child placing agencies operate under an excellent and a comprehensive set of standards that ensure proper care and effective treatment for at-risk children. They further maintain that the ‘short and

incomplete standards for Independent Foster Homes do not provide the same level of care for the child or the scrutiny needed to ensure proper practices by such homes.”

Department’s response: Licensed Independent Foster Homes are designed to offer families a choice to licensed child-placing agency foster homes. Additional requirements are proposed in the amended Licensing Standards for Independent Foster Homes to strengthen the protections offered to children and families. Independent Foster Home requirements are not specifically designed to serve at-risk youth, but recognize that families may require a temporary placement for a child for a variety of circumstances.

3. 22 VAC 141-30 Allows the caretaker to work with a General Education Development certificate (GED). In comparison, child-placing agencies are required to have a case manager with a minimum of a bachelor’s degree.

Department’s response: Acting as a case manager is only one of many roles for the caretaker. The case manager referenced in the child placing regulation is a role that is exclusive from the role and responsibility of a caretaker providing direct care to children. However, the exception that licensed and registered family day care home providers and family day care system providers do not have to meet the experience or training requirements when working with children who have previously been enrolled in the day care home has been removed.

4. 22 VAC 40-141-40 The requirements do not request a criminal history record request as is the case with child placing agencies.

Department’s response: The statutorily established background check requirements (criminal record check, sworn statement of affirmation or disclosure, and child protective services central registry check) for the applicant for licensure, providers, assistants, and adult household members has been added to the proposed amendments.

5. 22 VAC 40-141-60 A-J. Children’s Services of Virginia has expressed a concern that these requirements are not measurable.

Department’s response: One standard has been revised to improve clarity. These requirements serve to inform the providers of the abilities that are needed (and the Department’s expectations) to handle the task of providing foster care to children.

6. 22 VAC 40-141-70 Training of foster parents must be mandatory for providers, not just “when it is available.” Other private child-placing agency providers are expected to have training. Training the care takers is an essential part of ensuring that the providers understand the emotional and behavioral needs of children and are knowledgeable and competent in developing and in implementing effective treatment plans.

Department’s response: The training requirements have been revised to include the option of independent foster home providers accessing initial foster parent training offered through licensed child-placing agencies and local departments of social services,

in addition to, or in lieu of, any orientation or initial foster parent training offered by the department. The requirement for 20 hours of training annually has been moved to a separate standard number, thereby eliminating any confusion that the annual requirements are only applicable when “available.” Resources for training include the department’s spring and fall training for child care providers, training offered through local departments of social services, hospitals, United States Department of Agriculture (USDA), Virginia Institute of Social Services Training Activities (VISSTA), licensed child-placing agencies, etc.

7. 22 VAC 40-141-80 A health statement and just a TB test is needed for each household member. This is required of all members of foster families providing foster care services for private child-placing agencies.

Department’s response: The health requirements for providers has been revised to include TB testing or assessments for adults and to require subsequent testing or assessment every two years to document that the individual is “free from tuberculosis in a communicable form.” Additionally, the Department has added a requirement that any individual who comes in contact with a known case of tuberculosis or develops chronic respiratory symptoms, shall within 30 days of exposure or development, receive an evaluation to indicate the absence of tuberculosis in a communicable form. The revisions are in accordance with Virginia Department of Health Guidance. In addition, the Centers for Disease Control and Prevention (CDC) has determined that children in high-risk groups may benefit from screening, but that most children are not members of a high-risk group and the requirement could be deleted unless the health department recommends it. This would be covered under the 22 VAC 40-141-80 D and F.

8. 22 VAC 40-141-180 D. Children’s Services of Virginia states that the service plan requirements are missing the section of “goals, objectives, and strategies”. The permanency planning goal is the only goal required by Independent Foster Home standards. Intake studies, comprehensive treatment plans, and modifications and periodic reviews of treatment plans are essential parts of the case file for each child. These important reports, assessments, reviews, and updates are missing from the Independent Foster Home standards.

Department’s response: The service plan requirements for children placed in a short-term program include “the programs, care, service, and other support that the independent foster home will offer or arrange for the child and the child’s parents or guardians; this section would include any other goals, objectives and strategies, even though they are not specifically listed. Requirements for the review of the foster care plan are in accordance with § 16.1-282 of the Code of Virginia. The requirement has been added for individualized service plans for children placed by under a placing agreement to be updated at least every 30 days.

9. 22 VAC 40-141-80 E. Case planning is not defined.

Department's response: The term "case planning" as used in licensed independent foster homes would be the same as generic use.

### Clarity of the Regulation

*Please provide a statement indicating that the agency, through examination of the regulation and relevant public comments, has determined that the regulation is clearly written and easily understandable by the individuals and entities affected.*

Through the periodic review, public comments, and a thorough examination of the regulation, the Department has determined that the regulation is clearly written and easily understandable by the individuals and entities affected.

### Periodic Review

*Please supply a schedule setting forth when the agency will initiate a review and re-evaluation to determine if the regulation should be continued, amended, or terminated. The specific and measurable regulatory goals should be outlined with this schedule. The review shall take place no later than three years after the proposed regulation is expected to be effective.*

If the amended regulation is approved, a proposed package will be submitted to the Registrar of Regulations for publication for a 60-day public comment period prior to submitting a final regulation package. Periodic review of the regulation, existing or amending, will occur in accordance with Executive Order Number 21 (2002).

### Family Impact Statement

*Please provide an analysis of the proposed regulatory action that assesses the potential impact on the institution of the family and family stability including the extent to which the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.*

An analysis of proposed amendments to the existing Minimum Standards for Licensed Independent Foster Homes does not indicate a negative impact on the institution of the family or family stability. The proposed changes in Standards for Licensed Independent Foster Homes would strengthen the authority and rights of parents in the education, nurturing and supervision of their children by establishing guidelines that would allow a parent to retain custody of a child and place the child in an independent foster home. Proposed changes to the regulation serve to encourage self-sufficiency and promote self-pride by allowing families to select the option that best meets their needs and by increasing parental rights and responsibilities when children are

temporarily placed in a foster care setting. There is no anticipated impact on the status of marital commitment or disposable family income.

The proposed amendments, while strengthening the protection and welfare of children should not pose any unreasonable hardship to licensees and should clarify or simplify existing requirements, and support “best practices”.

Lastly, revisions have been made to incorporate statutory changes in the Code.